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STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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February 27, 2001

Hon. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Room TW-A325
Washington, D.C. 20554

Re: Comments of the New York State Department of Public Service on Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98.

Dear Secretary Salas:

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Federal Communication Commission's ("Commission") Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 ("FNPRM") released January 19, 2001. The Commission is seeking comments on how to provide competing local exchange carriers ("CLECs") access to loops served by a fiber-fed digital loop carrier ("DLC") at remote terminals. The Commission's goal to further access to advanced services is consistent with New York's objectives. We fully expect that the Commission's actions will complement the work already done by the New York Public Service Commission ("NY Commission").

The NY Commission has addressed many issues related to digital subscriber line ("DSL") services.[1] The NY Commission ordered that Verizon must make DSL services available to DLC customers where competitors choose to serve them, regardless of its affiliate's

[1] Case No. 00-C-0127, Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Services, issued October 31, 2000, Opinion No. 00-12; Order Granting Clarification, Granting Reconsideration In Part And Denying Reconsideration In Part, And Adopting Schedule, issued January 29, 2001 (enclosed are copies of these Orders).

desire to serve those customers, by methods that are not offered in its current tariffs.[2] The NY Commission does not require any particular method to facilitate DSL service to CLECs, but does require such accommodation on a case by case basis, where the current Verizon tariff offering is not commercially viable.

Verizon may accomplish its obligation to provide competitive access to DLC customers by allowing the collocation of competitors' line cards *in* next generation DLC remote terminals and providing transport back to the competitors' collocation presence in the central office.[3] As an alternative to collocation, the ILEC may migrate the customer currently served by a digital loop carrier to an all-copper loop. Another option is an offering at wholesale, as a combination of elements to competitors, of access to customers served by a DLC.

With regard to the viability of separating the high and low frequency portions of the loop at the remote terminal and routing the data traffic from the high frequency portion to the ILEC's central office, Verizon has suggested that it intends to offer a plan that would allow competitors to offer DSL services to customers served by DLC networks. It has not, as of this date, formally filed with the NY Commission.

In sum, we look forward to working with the Commission to ensure customer access to advanced services on a competitively neutral basis.

Respectfully submitted,

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[2] Case No. 00-C-0127, Opinion No. 00-12, at pp. 25-26.
[3] The Commission recently noted that where technically feasible, the ILEC must make physical collocation available in, not at, any structure that houses network facilities, including remote terminals. Collocation Remand Order, ¶47.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 00-12

CASE 00-C-0127 - Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services.

OPINION AND ORDER CONCERNING VERIZON'S WHOLESALE PROVISION OF DSL CAPABILITIES

Issued and Effective: October 31, 2000

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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CASE 00-C-0127 - Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services

OPINION NO. 00-12

OPINION AND ORDER CONCERNING
VERIZON'S WHOLESALE
PROVISION OF DSL CAPABILITIES

(Issued and Effective October 31, 2000)

BY THE COMMISSION:

INTRODUCTION

The issues before us concern obligations of Verizon New York, Inc. f/k/a New York Telephone Company (Verizon) to open its network further to facilitate the provision of high-speed data services over its telephone lines by competitors. The Digital Subscriber Line (DSL) collaborative, commenced in New York in August 1999, has been negotiating and resolving numerous operational issues concerning the provision to New Yorkers of high-speed data services, and the entry into the New York market of new competitive providers of these services. We

related proceedings, and parties' briefs.[1] Some of the issues consolidated here for consideration had been raised in comments in the proceeding concerning the transfer of assets from Verizon to its data subsidiary, VAD;[2] on the Verizon line sharing tariff;[3] and on the May 2000 Verizon filing of further revisions to its No. 914 and No. 916 tariffs to comply with the FCC UNE Remand Order.[4]

The parties conducted discovery, filed initial and rebuttal testimony, and participated in an on-the-record technical conference held in July 2000. A stenographic transcript of 489 pages was compiled, and initial and reply briefs were filed by Verizon, AT&T, WorldCom, Covad, Rhythms, the Attorney General, Sprint, and the Association of Communications Enterprises (Ascent). Although other parties questioned witnesses, factual evidence was presented by Verizon, VAD (Verizon's data affiliate), by DSL providers—Covad and Rhythms—and by competitive local exchange (voice) providers AT&T and WorldCom.

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[1] Notice of Consolidation of Issues (issued June 21, 2000).

[2] Case 00-C-0725, Petition of Bell Atlantic-New York for Approval of the Transfer of Certain Assets Associated with Advanced services to Bell Atlantic-Network Data, Inc. (Asset Transfer Proceeding).

[3] Case 99-C-1806.

[4] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, (rel. November 5, 1999) (UNE Remand Order).

this interval is necessary, even to provision line sharing, to deploy its workforce reliably and efficiently.

Covad and Rhythms suggest a much shorter interval based upon the actual work required to complete the provisioning. Covad and Rhythms reason that since most provisioning entails no dispatch, except to Verizon's own central offices, and the work is neither complicated nor time-consuming, Verizon can actually complete the provisioning work for a line sharing arrangement in one day. Nevertheless, Covad and Rhythms propose provisioning intervals of three days, decreasing to two days and one day after three-month intervals.

WorldCom supports Covad and Rhythms in the need for shorter intervals, but urges a two-day interval consistent with Verizon's Product Interval Guide for UNE-P voice migrations which do not involve dispatch, and WorldCom's interconnection agreement with Verizon which establishes a two-day interval for business POTS orders with no dispatch.

The Attorney General urges the Commission to adopt reasonable intervals, which are not represented by either Verizon (too long) or Covad/Rhythms (unrealistically short). The Attorney General supports, at most, a five day interval until Verizon's OSS automation is completed, when the interval can be shortened.

Verizon offers one interval to accommodate all DSL orders, regardless of the operational differences line sharing entails. In a line sharing arrangement voice service, and therefore dial tone, is present and outside plant dispatch is required less often than for stand-alone DSL. Verizon need only dispatch within its own central office. In these instances the total work required of Verizon, once the local service request is processed, is to assign a frame technician and perform the cross connections to the data CLEC collocation arrangement.

in the near term and to decrease the required interval to the lesser of parity with VAD or three days by March 2001.

2. The Cable and Splitter Capacity Intervals

Other interval issues concern the time Verizon takes for augmenting the cabling and splitter capacity between Verizon's main distribution frame and the competitor's collocation arrangement.

The provisioning intervals for augment cable and splitter capacity reflect how long Verizon may take to add additional cabling between a CLEC's cage and Verizon's Main Distributing Frame (MDF) and to install additional splitters, respectively. These are additional installations (augments) to existing collocation arrangements and could include: (a) adding cable, (b) adding cable or splitter, or (c) adding a splitter. Verizon currently offers the same 76 business-day interval for all augments and the initial construction and installation of the collocation arrangement. Verizon claims it needs 76 business days for augments to complete the site survey, engineering review, vendor selection and coordination, and sign-off with the CLEC.

Covad and Rhythms propose an overall interval of 30 calendar days, regardless of the type of augmentation work, though they argue work for some scenarios may only require a few days to complete. They cite problems experienced by the long augment interval, since less work is required to augment than to do the initial build. Verizon claims it cannot shorten the interval because: it does not know what work is needed for the augment until the order is placed, it does not want to replenish certain "plug-in" equipment on short notice, and it will disturb its work force management trend-lines if it must set shorter intervals. Verizon states it is unrealistic to expect cabling

interval is necessary or reasonable. Because augments involve far fewer steps than complete collocation installations, it is reasonable to shorten the overall interval for augments at this time. A 45 business day interval is appropriate for all augments--cable and splitter--for line sharing and line splitting. Verizon's work force management argument is not compelling, as it has not demonstrated that more efficient scheduling and operation is overly burdensome. Verizon will have to alter the way such work is scheduled to meet this new interval.[1]

The shorter interval is supported by the FCC's Collocation Remand Order issued August 10, 2000. The FCC, in response to the decision of the U.S. Court of Appeals for the D.C. Circuit,[2] established a 90-calendar day interval for physical collocation installation, if a state does not adopt an interval;[3] and sought comment on whether shorter intervals should be specified for augments or collocations within remote terminals.[4] The FCC has set a 90-calendar day (about 66 business days) interval for initial construction of collocation arrangements. Thus, a longer interval of 76 business days for

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[1] In addition, because Verizon has already been ordered to shorten this interval to 45 business days in another state in its footprint, Pennsylvania, workforce accommodations will have to be made in any event. Petition of Covad Communications Company for an Arbitration Award Against Bell Atlantic-Pennsylvania, Inc., Implementing the Line Sharing Unbundling Network Element, Docket No. A-310686F0002; Petition of Rhythms Links, Inc. for an Expedited Arbitration Award Implementing Line Sharing, Docket No. A-310698F0002, Opinion and Order (August 17, 2000)(Pennsylvania PUC Order).

[2] GTE v. FCC, 205 F.3d 416 (D.C. Cir. 2000).

[3] FCC Order on Reconsideration and Order, ¶29.

[4] Id. at ¶6.

1. Parties' Legal and Policy Arguments

At the technical conference and in brief, Verizon asserted it had no legal obligation to provide line sharing over UNE-P or resold lines or to provide splitters to accomplish these ends for UNE-P or resale providers. However, Verizon asserted it would continue to work with CLECs and DLECs to facilitate access to the high frequency portion of loops provided to CLECs.

The competitors, both voice providers of local exchange service and data service providers, point out that Verizon's position falls short of a binding commitment to provide line splitting, and that Verizon has refused to offer line splitting pursuant either to tariff or contract. Competitors fear the incumbent will delay the splitting of lines for which voice service is provided by others, while moving aggressively to build out its own line sharing customer base, as evidenced by the proposed Verizon merger with NorthPoint Communications Group, Inc.[1]

There is no dispute that the engineering processes entailed in splitting a line for a UNE-P voice customer and sharing a line for a Verizon voice customer are identical: there is no physical difference. The record evidence to this effect is unambiguous. The differences arise in the operation of the OSS, which must be modified to reflect the different business relationships among the end-user, the voice provider, the data service provider, and Verizon. According to Verizon, its software vendor, Telcordia, expects to release new software by November 30, 2000, reflecting a two-wholesaler environment. Verizon expects the testing and modification of that software to

[1] Verizon's petition seeking merger approval is pending in Case 00-C-1487.

full capability of the loop including its capacity to be split to accommodate DSL service.[1] Competitors urge the requirement of line splitting under state law, citing Public Service Law §§91, 94, and 97, and this Commission's long history of requiring unbundling. VAD adds its voice to that of data competitors, asserting that data providers should be able to provide data services over loops used by other CLECs to provide voice services.

2. Discussion

Over two million lines are being served by Verizon's competitors in the New York local exchange market; the majority of these are lines served using the UNE-P mode of entry.[2] Currently, this group of customers is ineligible for DSL services provided by line sharing. These customers may, however, obtain line sharing DSL by migrating their voice service back to the incumbent. Thus, this restriction operates to advantage Verizon in its capacity as a voice local exchange service provider: it alone can provide customers with a full range of desirable associated services.

Conversely, competitors submitted evidence that customers were precluded from replacing Verizon as their local exchange service provider without also terminating their line shared DSL service. Accordingly, this restriction prevents free

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[1] CC Docket No. 00-65, Application by SBC Communications In. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order (released June 30, 2000)(SBC/Texas 271 Approval Order), ¶325.

[2] Over 1.1 million customers receive local exchange service over UNE-P; over a quarter of million UNE-P orders were filled in July 2000 alone. Verizon Carrier-to-Carrier Report for July 2000.

line splitting issue. Further, although CLECs generally take the position that the SBC/Texas 271 Order obligates ILECs to provide line splitting over UNE-P, the FCC noted that line splitting issues had not been fully developed at the time the Texas Commission was considering SBC's Section 271 application. Unlike the record before the Texas Commission, line splitting issues have been thoroughly presented in this proceeding. Based on the record before us, we find that line splitting over UNE-P purchased from Verizon is technically feasible, and necessary for competitors to provide their services to customers.

Second, viewing the requirement that Verizon facilitate CLEC access to the high frequency portion of the loop as a further unbundling is also consistent with federal law.[1] In its UNE Remand Order, the FCC stated that "Section 251(d)(3) grants state commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of Section 251 and the national policy framework instituted in this Order."[2] Requiring Verizon to facilitate line splitting access to the high frequency portion of the loop meets the criteria in §251. States may require the unbundling of additional network elements upon a determination that lack of access to a non-proprietary network element impairs a CLEC's ability to provide the service it seeks to offer. We find that lack of access to line splitting would impair both voice and data competitors' ability to provide customers with desired services. Lack of such access

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[1] Telecommunications Act of 1996 (the 1996 Act)(47 U.S.C. §251(d)(3)) provides for state regulations, orders, and policies establishing access and interconnection obligations of local exchange carriers, where consistent with the Act.

[2] UNE Remand Order §154; see, also, Line Sharing Order §§221-225.

make investments in facilities by helping to solidify the CLECs' market share. Finally, line splitting will make advanced services available to customers of all local exchange carriers and therefore raises the possibility of less regulation.

3. Timetable for Providing Line Splitting and OSS Modifications

Substantial modification of the Verizon OSS is required to address ordering, provisioning, billing, maintenance, inventory, and repair functions. This process is underway and must be fully developed by Verizon in cooperation with the CLECs, particularly with respect to business rules.[1]

Verizon's vendor, Telcordia, is preparing a software application to be released by November 30, 2000, to interface with Verizon's OSS. Although Telcordia's effort was primarily intended for basic line sharing, Verizon indicated that the new release will include fields which will accommodate two wholesalers, one providing voice and the other data. Verizon reports that it could take as much as three months to test the new software, debug it, send it back to Telcordia for revisions, and retest it. This schedule would allow implementation of the new OSS by March 2001, which we will require.

Anticipating the successful Telcordia release, Verizon should take steps immediately to establish a pilot for line splitting to test the ordering and provisioning processes and to work through some of the problems that likely will be encountered. Line splitting must be made available as soon as practicable, whether or not a fully electronic interface is in place.

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[1] For example, parties are negotiating the OSS systems necessary to reflect the range of business relationship between data and voice CLECs.

assertion that incumbent splitter ownership would make high volume changes more, not less, burdensome.

Parties to the DSL collaborative discussed in considerable depth the relative merits of various configurations of splitter ownership and placement and agreed to two options, neither of which entailed incumbent ownership of the splitter. In fact, dozens of collocation installations have been put in place, and data CLECs indicated no enthusiasm for reconfiguring these for ILEC ownership.[1] In light of the heavy burden AT&T must shoulder to demonstrate that reconfiguration or change in plans adopted by the collaborative are necessary, it cannot be said to have made a convincing case. Nor is its legal argument compelling that the splitter is an intrinsic component of the loop; Verizon's response that splitters are widely available in the marketplace refutes the view that AT&T must be provided them by the incumbent or face impairment of its provision of DSL-capable loops to customers. Further, although competitors are interested in the provision by Verizon of access to the splitter function a line at a time, their evidence failed to establish that this was either a superior or a more equitable network design than that presently in place. Moreover, the FCC has not required incumbent LECs to provide access to these splitters as part of the loop, but is reviewing that determination in response to petitions for reconsideration of the UNE Remand

[1] Rhythms, for example, asserts it would be beneficial for CLECs if Verizon were to own splitters, but expresses its preference for ownership and control of splitters within its collocation space. Rhythms' Initial Brief, p. 26.

Because DSL is inherently a copper-based technology, in order for a data provider to serve customers whose service is carried in part over fiber optic cable, equipment necessary to provide DSL (i.e., DSLAMs and splitters) must be placed at the remote terminal.

On May 17, 2000, Verizon filed tariff revisions in compliance with the UNE Remand Order, offering options for competitors to gain access to its customers served by digital loop carriers. Verizon opines that, as a technical matter, it can not provide voice and data end-to-end over a loop served by digital loop carrier; and that, as a legal matter, line sharing is required only over copper loops. Therefore, it has no obligation to provide line sharing where digital loop carrier is in use. The tariff amendments allow competitors to collocate their equipment for providing DSL service at adjoining sites, where room in the incumbent's remote terminal has been exhausted, and the competitor can obtain the necessary rights-of-way. To transport the data traffic to the competitor's point of presence, the tariff offers dark fiber, for which competitors must supply the necessary electronics.[1]

Competitors consider this tariff offering so prohibitively expensive and burdensome as to amount to an impairment of their ability to provide services to customers and a denial of access to necessary elements unobtainable elsewhere on a reasonable, commercial basis. They ask us to require Verizon to offer commercially accessible collocation of DSLAM

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[1] Verizon will provide unbundled feeder to transport data between the central office and the remote terminal or adjoining competitor structure. Verizon offers the subloop, not the electronics or the packet transport. These would entail additional costs where available.

The Legal Requirements

In the BA/GTE Merger Order, the FCC required that to the extent a Verizon/GTE incumbent LEC allows its separate affiliate to collocate packet switches, routers, or other equipment, the nondiscrimination safeguards compel the incumbent LEC to allow unaffiliated carriers to collocate similar equipment on nondiscriminatory rates, terms and conditions.[1] To do otherwise would allow the transfer of Verizon's advanced services assets to defeat or elude its obligation to provide nondiscriminatory access to network elements and services for the provision to customers of advanced services.[2]

Further, in the UNE Remand Order, the FCC reasoned that where the incumbent has deployed digital loop carrier systems, and where no spare copper facilities are available, competitors are effectively precluded altogether from offering xDSL service if they do not have access to unbundled packet switching.[3]

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[1] BA/GTE Merger Order, ¶261.

[2] Advanced services are defined by the Federal Communications Commission (FCC) as "intrastate or interstate wireline telecommunications services...that rely on packetized technology and have the capability of supporting transmission speeds of at least 56 kilobits per second (kbps) in both directions." In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc. Transferee, for Consent to Transfer Control, CC Docket No. 98-141, Memorandum Opinion and Order (released October 8, 1999)(the Ameritech/SBC Order), ¶363.

[3] UNE Remand Order, §§304, 313.